IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

Crl.MC.No. 1031 of 2007()

CC.160/1995 of JUDL.MAGISTRATE OF FIRST CLASS COURT, PAYYANNUR

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PETITIONER/3RD ACCUSED:

JOSHI KALLEN, S/O.LUKOSE,
KALLEN HOUSE, NEEROZHUKKUNCHAL,
MADAI P.O., KANNUR DISTRICT.

BY ADV. SRI.P.K.RAVISANKAR

RESPONDENT/STATE:

STATE OF KERALA REPRESENTED BY
PUBLIC PROSECUTOR,HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 29/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.1031 of 2007

Dated this the 29th day of March 2007

O R D E R

The petitioner is the third accused in a prosecution interalia for the offences punishable under Sections 143, 147,447 and 323 read with 149 I.P.C. All the substantive offences are compoundable offences, it is pointed out. The co-accused have all faced trial. They have already been found not guilty and acquitted by the competent courts. The petitioner was not available for trial. The case against him has hence split up. Non-bailable warrant has been issued against the petitioner to procure the presence of the petitioner. The petitioner is willing to surrender before the learned Magistrate. The complainant has already compounded the offences. The petitioner apprehends that the learned Magistrate may not consider his application for bail on merits, in accordance with law and expeditiously.

2. It is for the petitioner to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which he could not earlier appear before

the learned Magistrate. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioner on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs.Deputy Superintendent of Police [2003(1)KLT 339].

3. The learned counsel for the petitioner submits that the petitioner may be permitted to urge before the learned Magistrate that the charges can and need be framed against the petitioner only for the compoundable offences and if so, the composition can be accepted. An early consideration of that question may be directed, it is further submitted. I am satisfied that the learned Magistrate must accept the request of the petitioner for an early consideration of his contention that charges are liable to be framed only for compoundable offence against him.

4. In the result, this Criminal Miscellaneous Case is dismissed but with the specific observation that if the petitioner surrenders before the learned Magistrate and applies for bail,

after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

Hand over copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

jsr

// True Copy// PA to Judge

R.BASANT, J

C.R.R.P.No.

ORDER

21ST DAY OF JULY 2006